



BILLING CODE 6730-02

FEDERAL MARITIME COMMISSION

46 CFR Part 525

[Docket No. 21-06]

RIN: 3072- AC87

Marine Terminal Operator Schedules

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission (FMC) proposes to modernize outdated requirements and clarify existing requirements associated with the filing of marine terminal operator (MTO) schedules.

DATES: Submit comments on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

In compliance with the Paperwork Reduction Act (PRA), the Commission is also seeking comment on revisions to an information collection. See the Paperwork Reduction Act section under Rulemaking Analyses and Notices below. Please submit all comments relating to the revised information collection requirements to the FMC and to the Office of Management and Budget (OMB) at the address listed below under ADDRESSES on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments to OMB are most useful if submitted within 30 days after publication.

ADDRESSES: You may submit comments, identified by Docket No. 21-06, by emailing secretary@fmc.gov. For comments, include in the subject line: "Docket No. 21-06,

Comments on Marine Terminal Operator Schedules Rulemaking.” Comments should be attached to the email as a Microsoft Word or text-searchable PDF document. Comments regarding the proposed revisions to the relevant information collection should be submitted to the FMC through the method above and a copy should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Maritime Commission, 725 17th Street NW, Washington, DC 20503; by fax: (202) 395-5167; or by email: OIRA_Submission@OMB.EOP.GOV.

Instructions: For detailed instructions on submitting comments, including requesting confidential treatment of comments, and additional information on the rulemaking process, see the Public Participation heading of the SUPPLEMENTARY INFORMATION section of this document. Note that all comments received will be posted without change to the Commission’s website, unless the commenter has requested confidential treatment.

Docket: For access to the docket to read background documents or comments received, go to the Commission’s Electronic Reading Room at: <https://www2.fmc.gov/readingroom/proceeding/21-06/>.

FOR FURTHER INFORMATION CONTACT: Rachel E. Dickon, Secretary; Phone: (202) 523-5725; Email: secretary@fmc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Regulations for the publication of terminal schedules by MTOs are set forth in 46 CFR part 525. Information made available under this part may be used to determine MTOs' compliance with shipping statutes and regulations.

II. Background

Rules regarding MTO schedules are outlined in 46 CFR part 525. The regulations are limited to the optional publication of MTO schedules. Pursuant to part 525, a marine terminal operator, at its discretion, may make available to the public, subject to section 10(d) of the Shipping Act (46 U.S.C. 41102(c), 41103, 41106), a schedule of its rates, regulations, and practices. Part 525 also discusses the rules with respect to making terminal schedules available to the public. These regulations were scheduled to be reviewed in Fiscal Year 2020. The Commission proposes several changes to these regulations that are neither substantial nor policy related. Some provisions reference old names of a current Commission bureau or outdated technology used to gain access to MTO schedules. Other provisions have been clarified as deemed necessary or revised to be consistent with other parts of the Commission's regulations.

III. Discussion of Proposed Changes

As discussed above, the proposed changes are non-policy related and the intent is limited to modernizing outdated requirements, clarifying existing requirements and definitions, and making the existing requirements and definitions consistent with other parts of the Commission's regulations.

Section 525.1. The proposed rule revises references to the Shipping Act of 1984 (the Act) to remove specific cites to the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998 because several other laws also amend the

Shipping Act of 1984. *See* An Act to Complete the Codification of Title 46, United States Code, “Shipping,” as Positive Law, Pub. L. 109-304, 120 Stat. 1485 (2006); Frank LoBiondo Coast Guard Authorization Act of 2018, Pub. L. 115-282, 132 Stat. 4192 (2018). These revisions affect section 525.1(a) and (c)(1). The proposed rule adds clarifying language to the definition of “bulk cargo” to show that bulk “containerized cargo tendered by the shipper” is subject to mark and count and is, therefore, subject to the requirements of this part. The proposed rule amends the definition of “forest products” to correct a typographical error.

In addition, the proposed rule revises the definition of “marine terminal operator” to mean “a person engaged in the United States in the business of providing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier[.]” This language is consistent with the statutory definition of an MTO. *See* 46 U.S.C. 40102(15). The proposed rule also adds language to clarify that shippers or consignees who exclusively provide their own marine terminal facilities in connection with providing marine terminal services are not MTOs.

The proposed rule amends the definition of “terminal facilities” by adding “docks, berths, piers, [and] aprons” to the list of structures comprising a terminal unit. In addition, the proposed language replaces the term “water carriers” with “ocean common carriers.”

The proposed rule also introduces a definition for the “United States” that is consistent with the definition found in 46 U.S.C 114. To accommodate the new paragraph, the proposed rule renumbers paragraphs 525.1(c)(21) to (23) to be paragraphs 525.1(c)(22) to (24). Additionally, the proposed rule revises the definition of an MTO to

delete “or a commonwealth, territory, or possession thereof,” because those entities are now included in the definition of “United States.”

Section 525.2. The proposed rule does not revise section 525.2, *Terminal Schedules*.

Section 525.3. With respect to part 525.3, Availability of marine terminal operator schedules, the proposed rule strikes outdated and unnecessary language relating to accessing electronically published MTO schedules. The proposed rule deletes the terms “personal computer (PC),” “dial-up connection,” “the Internet,” “Web browser,” “Telnet session,” “modem,” and any further definition or technical requirements relating to these terms. The proposed language also amends the term “URL” to mean “uniform resource locator.” The proposed rule deletes current paragraphs 525.3(c) and (e) regarding dial-up connection requirements and the Commission access as the technologies referenced in those paragraphs are obsolete.

With the deletion of specific paragraphs as discussed above, the proposed rule renumbers the remaining paragraphs. With respect to current paragraph 525.3(f), the proposed rule replaces references to the “Bureau of Tariffs, Certification and Licensing,” which no longer exists, with the “Bureau of Trade Analysis” (BTA). In addition, the proposed rule also replaces “name and telephone number of firm’s representative” with simply “contact information for its representative.” The proposed rule also clarifies that BTA has authority to accept submitted Form FMC-1 filings and revisions, and that the filings are pending until accepted.

With respect to current paragraph 525.3(g), the proposed rule clarifies that an MTO may make available to the public its schedules and that any such schedule made

available to the public is enforceable by an appropriate court as an implied contract without proof of actual knowledge of its provisions. This language is consistent with 46 U.S.C. 40501(f).

Section 525.4. The proposed rule does not revise section 525.4.

IV. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the docket, please include the docket number of this document in your comments.

You may submit your comments via email to the email address listed above under ADDRESSES. Please include the docket number associated with this notice and the subject matter in the subject line of the email. Comments should be attached to the email as a Microsoft Word or text-searchable PDF document.

How do I submit confidential business information?

The Commission will provide confidential treatment for identified confidential information to the extent allowed by law. If your comments contain confidential information, you must submit the following by email to the address listed above under ADDRESSES:

- A transmittal letter requesting confidential treatment that identifies the specific information in the comments for which protection is sought and demonstrates that the information is a trade secret or other confidential research, development, or commercial information.

- A confidential copy of your comments, consisting of the complete filing with a cover page marked “Confidential-Restricted,” and the confidential material clearly marked on each page.
- A public version of your comments with the confidential information excluded. The public version must state “Public Version—confidential materials excluded” on the cover page and on each affected page, and must clearly indicate any information withheld.

Will the Commission consider late comments?

The Commission will consider all comments received before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments received after that date.

How can I read comments submitted by other people?

You may read the comments received by the Commission at the Commission’s Electronic Reading Room at the addresses listed above under ADDRESSES.

V. Regulatory Notices and Analysis

Regulatory Flexibility Act

The Regulatory Flexibility Act (codified as amended at 5 U.S.C. 601–612) provides that whenever an agency is required to publish a notice of proposed rulemaking under the Administrative Procedure Act (APA) (5 U.S.C. 553), the agency must prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) describing the impact of the proposed rule on small entities, unless the head of the agency certifies that the rulemaking will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 605. Based on the analysis below, the Chairman

of the Federal Maritime Commission certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The regulated business entities that would be impacted by the rule are marine terminal operators. The Commission has determined that marine terminal operators generally do not qualify as small entities under the guidelines of the Small Business Administration (SBA). *See FMC Policy and Procedures Regarding Proper Consideration of Small Entities in Rulemakings* (Feb. 7, 2003), available at https://www.fmc.gov/wp-content/uploads/2018/10/SBREFA_Guidelines_2003.pdf.

National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4347) requires Federal agencies to consider the environmental impacts of proposed major Federal actions significantly affecting the quality of the human environment, as well as the impacts of alternatives to the proposed action. When a Federal agency prepares an environmental assessment, the Council on Environmental Quality (CEQ) NEPA implementing regulations (40 CFR parts 1500 through 1508) require it to “include brief discussions of the need for the proposal, of alternatives [. . .], of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.” 40 CFR 1508.9(b). This section serves as the Commission's Draft Environmental Assessment (Draft EA) for the proposed changes to 46 CFR part 525.

This document sets forth the purpose of and need for this action. The purpose of this rulemaking is to modernize outdated requirements and clarify existing requirements associated with the filing of MTO schedules. The recommended changes are non-policy related and the intent is limited to modernizing outdated requirements and

clarifying existing requirements and definitions to make them consistent with other parts of the Commission's regulations.

The Commission has reviewed the information presented in this Draft EA and concludes that the proposed action and alternatives it may consider would have nothing more than de minimis impacts on the quality of the human environment. Based on the information in this Draft EA and assuming no additional information or changed circumstances, the Commission expects to issue a Finding of No Significant Impact (FONSI). Such a finding will be made only after careful review of all public comments received. A Final EA and a FONSI, if appropriate, will be issued as part of the final rule.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) (PRA) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public. 44 U.S.C. 3507. The agency must submit collections of information in proposed rules to OMB in conjunction with the publication of the notice of proposed rulemaking. 5 CFR 1320.11.

The information collection requirements associated with the marine terminal operator schedules requirements in part 525 are currently authorized under OMB Control Number 3072-0061. The proposed rule does not make any changes to the option for MTOs to file MTO schedules with the Commission.

In compliance with the PRA, the Commission has submitted the proposed revised information collection to the Office of Management and Budget and is requesting comment on the proposed revision.

Title: 46 CFR part 525 – Marine Terminal Operator Schedules and Related Form FMC-1.

OMB Control Number: 3072-0061 (Expires April 30, 2024).

Abstract: 46 U.S.C. 40501(f) provides that a marine terminal operator (MTO) may make available to the public a schedule of its rates, regulations, and practices, including limitations of liability for cargo loss or damage, pertaining to receiving, delivering, handling, or storing property at its marine terminal. The Commission's rules governing MTO schedules are set forth at 46 CFR part 525.

Current Actions: The proposed rule would modernize outdated requirements and clarify existing requirements associated with the filing of MTO schedules.

Type of Review: Revision of a previously approved collection.

Needs and Uses: The Commission uses information obtained from Form FMC-1 to determine the organization name, organization number, home office address, name and telephone number of the firm's representatives and the location of MTO schedules of rates, regulations and practices, and publisher, should the MTOs determine to make their schedules available to the public, as set forth in section 8(f) of the Shipping Act.

Frequency: This information is collected prior to an MTO's commencement of its marine terminal operations.

Type of Respondents: Persons operating as MTOs.

Number of Annual Respondents: The Commission estimates the respondent universe at 20, of which 10 opt to make their schedules available to the public.

Estimated Time Per Response: The time per response for completing Form FMC-1 averages 0.5 person-hours, and approximately 5 person-hours for related MTO schedules.

Total Annual Burden: The Commission estimates the total annual person-hour burden at 60 person-hours.

Comments are invited on:

- Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- Whether the Commission's estimate for the burden of the information collection is accurate;
- Ways to enhance the quality, utility, and clarity of the information to be collected;
- Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Please submit any comments, identified by the docket number in the heading of this document, by the methods described in the ADDRESSES section of this document.

Executive Order 12988 (Civil Justice Reform)

This proposed rule meets the applicable standards in E.O. 12988 titled, "Civil Justice Reform," to minimize litigation, eliminate ambiguity, and reduce burden. Section 3(b) of E.O. 12988 requires agencies to make every reasonable effort to ensure that each new regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected

conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, available at <http://www.reginfo.gov/public/do/eAgendaMain>.

List of Subjects in 46 CFR Part 525

Marine Terminal Operator Schedules.

For the reasons set forth above, the Federal Maritime Commission is proposing to amend 46 CFR part 525 as follows:

Part 525-MARINE TERMINAL OPERATOR SCHEDULES

1. The authority citation for part 525 continues to read as follows:

Authority: 46 U.S.C. 40102, 40501, 41101-41106.

2. Amend §525.1 by:

a. Revising paragraphs (a) and (c)(1), (2), (7), (8), (13), and (18);

- b. Redesignating paragraphs (c)(21) through (23) as paragraphs (c)(22) through (24); and
- c. Adding a new paragraph (c)(21).

The revisions and addition read as follows:

§525.1 Purpose and scope.

(a) *Purpose.* This part implements the Shipping Act of 1984, as amended (46 U.S.C. 40101-41309). The requirements of this part are necessary to enable the Commission to meet its responsibilities with regard to identifying and preventing unreasonable preference or prejudice and unjust discrimination pursuant to section 10 of the Act (46 U.S.C. 41101-41106).

* * * * *

(c) * * *

(1) *Act* means the Shipping Act of 1984, as amended.

(2) *Bulk cargo* means cargo that is loaded and carried in bulk without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk containerized cargo tendered by the shipper is subject to mark and count and is, therefore, subject to the requirements of this part.

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(7) *Expiration date* means the last day after which the entire schedule or a single element of the schedule, is no longer in effect.

(8) *Forest products* means forest products including, but not limited to, lumber in bundles, rough timber, ties, poles, piling, laminated beams, bundled siding, bundled plywood, bundled core stock or veneers, bundled particle or fiber boards, bundled hardwood, wood pulp in rolls, wood pulp in unitized bales, paper and paper board in rolls

or in pallet or skid-sized sheets, liquid or granular by-products derived from pulping and papermaking, and engineered wood products.

* * * * *

(13) *Marine terminal operator* means a person engaged in the United States in the business of providing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier, or in connection with a common carrier and a water carrier subject to subchapter II of chapter 135 of title 49, United States Code. A marine terminal operator includes, but is not limited to, terminals owned or operated by states and their political subdivisions; railroads who perform port terminal services not covered by their line haul rates; common carriers who perform port terminal services; and warehousemen who operate port terminal facilities. For the purposes of this part, marine terminal operator includes conferences of marine terminal operators. This term does not include shippers or consignees who exclusively provide their own marine terminal facilities in connection with tendering or receiving proprietary cargo from a common carrier or water carrier.

* * * * *

(18) *Terminal facilities* means one or more structures comprising a terminal unit, which include, but are not limited to docks, berths, piers, aprons, wharves, warehouses, covered and/or open storage spaces, cold storage plants, cranes, grain elevators and/or bulk cargo loading and/or unloading structures, landings, and receiving stations, used for the transmission, care and convenience of cargo and/or passengers in the interchange of same between land and ocean common carriers or between two ocean common carriers.

* * * * *

(21) *United States* means the States of the United States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States.

* * * * *

3. Amend §525.3 by revising paragraphs (b) through (e) to read as follows:

§525.3 Availability of marine terminal operator schedules.

* * * * *

(b) *Access to electronically published schedules.* Marine terminal operators shall provide access to their terminal schedules via the internet.

(c) *Internet connection.* (1) The internet connection requires that systems provide a uniform resource locator (URL) internet address (*e.g., <http://www.tariffsrus.com> or <http://1.2.3.4>*).

(2) Marine terminal operators shall ensure that their internet service providers shall provide static internet addresses.

(d) *Notification.* Each marine terminal operator shall notify the Commission's Bureau of Trade Analysis (BTA), prior to the commencement of marine terminal operations, of its organization name, home office address, contact information for its representative, the location of its terminal schedule(s), and the publisher, if any, used to maintain its terminal schedule, by electronically submitting Form FMC-1 via the Commission's website at www.fmc.gov. Any changes to the above information shall be immediately transmitted to BTA within 30 calendar days. BTA has the authority to accept submitted Form FMC-1 filings and revisions. Form FMC-1 filings are pending

until accepted. The Commission will publish, on its website, the location of any terminal schedule made available to the public.

(e) *Form and manner.* A marine terminal operator may make available to the public a schedule of rates, regulations, and practices, including limitations of liability for cargo loss or damage, pertaining to receiving, delivering, handling, or storing property at its marine terminal. Any such schedule made available to the public is enforceable by an appropriate court as an implied contract without proof of actual knowledge of its provisions. Each terminal schedule made available by a marine terminal operator shall contain an individual identification number, effective date, expiration date, if any, and the terminal schedule in full text and/or data format showing the relevant rates, charges, and regulations relating to or connected with the receiving, handling, storing, and/or delivering of property at its terminal facilities.

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By the Commission.

Rachel E. Dickon,

Secretary.

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